

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2393 of 1982

WITH

SPECIAL CIVIL APPLICATION No 843 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVNAGAR DAIRY

Versus

BACHUBHAI M. RAJPURA & ANR.

Appearance:

In SCA No.2393 of 1982

MR KETAN A DAVE for Petitioner
MR SK JHAVERI for Respondent No. 1
MR KM PATEL for Respondent No. 2

In SCA No.843 of 1982

MR KM PATEL for Petitioner
MR SK JHAVERI for Respondent No. 1
MR KETAN A DAVE for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:13/12/96

C.A.V. JUDGMENT

As both the Special Civil Applications have arisen from the Award of the Labour Court, Rakot, in Ref.LCE No.252 of 1979 dated 14.8.1981, the same are being disposed of by this common order.

2. Heard learned counsel for the parties. The facts in brief, in Special Civil Application No.2393 of 82 are as under:

The Bhavnagar Sahkari Haat Madhyastha Bhandar Ltd., Bhavnagar, is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'Bhandar'). In the year 1969, the Bhandar had taken over the management of the dairy at Bhavnagar from the Public Dairy. The said dairy was run in the name of 'Doodhsarita' Dairy. The Public dairy was having two different establishments namely Consumer Store and the Dairy. Though they were under one co-operative society, but were run as two separate undertakings. Each undertaking had its own personnel and they were not liable to be transferred from one to another. With effect from 4.4.78 the Bhandar had transferred, under the decision taken by the Government of Gujarat, the Doodhsarita Dairy to the Gujarat Dairy Development Corporation, Gandhinagar, which runs the said dairy under the name of Bhavnagar Dairy (hereinafter referred to as the dairy), which is respondent No.2 in this Special Civil Application, i.e. S.C.A. No.2393 of 82.

3. The respondent No.1, hereinafter referred as the workman, was appointed as Cashier-cum-Clerk in the Doodhsarita Dairy in September 1972. The workman, as per the case of Bhandar, was not discharging duties properly and was not taking interest in the work of dairy and was therefore given show cause notice on 5.5.76 and a departmental inquiry was initiated against him. The Bhandar stated that the workman has not taken part in the inquiry. He was dismissed from the services of the dairy from 6.5.76. That order has been made by the Bhandar, which is not in dispute between the parties.

4. The workman has raised an industrial dispute for his reinstatement and payment of full backwages. The industrial dispute raised by the workman has been referred for adjudication under the Industrial Disputes Act, 1947 to the Labour Court, Rajkot, which was taken up vide Reference (LCR) No.252/79. In the reference, both Bhandar and Dairy were impleaded as parties. It is also

not in dispute that both, the Bhandar and the Dairy put appearance in the said reference and have also filed their separate written statements to the statement of claim of the workman. In the written statement, the Dairy has taken defence that it has taken over the management of the Dairy from 4.4.78 and as per understanding between it and the Bhandar, the liability towards the workman is that of the Bhandar and therefore the Reference against it should be dismissed. On behalf of Bhandar, a defence has been taken that the workman was not taking interest in the work of the Dairy and as such a show cause notice was given to the workman and inquiry was held against him in which he has not appeared and ultimately he was dismissed from the services. The statement made in the statment of claim was controverted. The Bhandar and the Dairy have not led any oral or documentary evidence in supporty of their defence taken in the written statement. Not only that, but nobody on their behalf has appeared before the Labour Court for making arguments also. The Reference has been decided by the Labour Court under its impugned Award dated 14th August 1981. The impugned order of termination of services of the workman dated 9.6.76 with effect from 6.5.76 was declared to be illegal and the same was set aside. The Dairy and the Bhandar were directed to reinstate the workman to his original post with continuity of service with full backwages from 29th December 1978 till the date of his reinstatement.

5. Both, Bhandar and the Dairy filed writ petitions before this Court challenging that Award of the Labour Court. The Dairy has come up with the case in Special Civil Application No.843 of 1982 that it has no liability whatsoever of reinstatement of the workman as well as to pay him any backwages. It is a case where the Bhandar should reinstate and pay him all backwages. By taking over the Dairy in question from Bhandar, the liability of the employee was not taken over. In view of this fact, the Dairy has come up with the case before this Court that the Award which is made against it is higly arbitrary and illegal.

6. On the other hand, the Bhandar has come up with case that the termination of services has been made of the respondent workman after holding full fledged inquiry but the workman has not participated therein and as such, the Bhandar had no option except to proceed exparte against him. Further case of Bhandar is that the services of the workman has not been terminated by way of any victimization.

7. In Special Civil Application No.843 of 1982, on 26th February 1982, notice was issued pending admission. The matter has come up for admission on 7.4.82 after service. Rule was issued on that date and interim relief to the to the following extent was granted:

"The award will not be executed against petitioner till further orders. We clarify that this will not protect respondent No.2 herein from being proceeded against. To be heard in the second week of June 1982."

8. The Special Civil Application No.2393 of 1982 has come up for admission before this Court on 15.6.82, on which date notice was issued pending admission and further order has been made which reads as under:

Notice pending admission to respondents returnable on June 30, 1982 to issue on petitioner deposition in the Court all the backwages due to the workman for the period commencing from December 29, 1978 till August 14, 1981 and the wages for the period during which the workman would have earned salary if the order of the Labour Court was complied with and the workman had been reinstated, that is to say, for the period commencing from August 15, 1981 till June 15, 1982. Notice to issue only after the deposit of the aforesaid amount is made. In case deposit is made late, it will be open to Counsel for the petitioner to get the returnable date extended."

9. It appears that in pursuance of said order, amount has been deposited as ordered by this Court, by the petitioner, in this Court and the same has been deposited in F.D.R. with the Indian Bank, Paldi Branch, Ahmedabad.

10. The workman filed Civil Application No.1675 of 1987 in which he impleaded, both Bhandar and Dairy as parties, opponent No.1 and 2 respectively. On 28th September, 1987, this Court has disposed of said Civil Application. The substance of the order is that the workman was ordered to be given last pay drawn as a salary during the pendency of this Special Civil Application, by opponent No.1. The workman was also directed to withdraw interest accrued on the fixed deposit receipt.

11. I have given my thoughtful considerations to the

submissions made by the learned counsel for the parties.

12. After going through the Award, I am satisfied that no illegality whatsoever has been committed by the Labour Court to the extent it declared the order of termination of the services of the workman to be illegal. The Bhandar has not produced any evidence, oral or documentary to show and establish that any inquiry has been held against the workman. It is a case of termination of the services of a workman for alleged misconduct and it could have been done only after holding inquiry. Not only this, the Bhandar has also not produced any record of inquiry. In view of this fact, the Labour Court has not committed any illegality in holding that no inquiry has been conducted in the present case against the workman. Further finding of the Labour Court that it appears to be a case of victimization of the workman also does not call for interference of this Court. The Bhandar and the Dairy both had ample opportunity to produce oral and documentary evidence in support of their cases but for the reasons best known to them, they have not availed of that opportunity. Termination of services is a major penalty and it could have been done only after holding proper inquiry. In the case of Avad Kishore v. Damodar Valley Corporation, reported in AIR 1994 SC 482, the Apex Court held that the order of withholding of increment without inquiry is not proper. Here is the case where penalty has been given of termination which is a major penalty. The Labour Court has rightly concluded that the principles of natural justice have been violated in the present case. The net result of this discussion is that the Award of the Labour court to the extent it declared the termination of services of the workman to be illegal, does not call for any interference of this Court. However, the Labour Court should have given final verdict regarding the liability of the Bhandar or the Dairy. Instead of doing so, the Labour Court has made the Award against both, Bhandar and the Dairy. The Labour Court, while making this order has altogether lost sight of an important fact that the Dairy was taken over by the Bhandar with effect from 4.4.78. Termination has been made by the Bhandar when the Dairy was under it. The termination has been made by Bhandar and the Labour Court could have gone on the question that for some illegal order made by Bhandar, whether the Dairy can be made responsible or not. Secondly, the Labour Court could have also gone on the question whether the Dairy has taken all the employees of Dairy which has been taken over by it from the Bhandar. These are major questions which could have been gone into and instead of passing vague and indefinite Award which

caused unnecessary litigation, the liability of either Bhandar or Dairy could have been clearly demarked and defined. It is true that the Bhandar and the Dairy have not cooperated in the proceedings. They felt satisfied by filing written statement and no further evidence has been produced. They have not even participated in the arguments made in the case, but at the same time, the dispute which is sought to be raised now in these petitions by Bhandar and the Dairy cannot be gone into by this Court sitting under Article 226 or 227 of the Constitution of India. Many questions of facts are to be gone into before determining the liability either of Bhandar or Dairy. Shri S.K. Jhaveri, learned counsel for the workman contended that the Bhandar is running the establishment and as such, this Court may pass the order continuing the workman in the service of Bhandar. On the other hand, Shri Ketan Dave, learned counsel for the Bhandar, contended that the establishment in which the workmen was employed has been taken over by the Dairy and as such reinstatement and all liabilities from the date of taking over are that of Dairy and not of Bhandar. These are disputed questions of fact on which evidence has to be produced by both the parties and this Court cannot go on to decide them. In the circumstances, interest of justice will be served in case the matter is remanded back to the Labour Court with directions to decide these questions after giving both, Bhandar and Dairy as well as the workman, reasonable opportunity of producing evidence, documentary or oral, or both, in respect of these questions. The Bhandar and Dairy have delayed the proceedings because of their inaction or omission of non production of oral or documentary evidence. The workman is not, in an manner, responsible for the same.

13. In the result, these Special Civil Applications are partly allowed. The order of the Labour Court to the extent where it declared the termination of the services of the workman to be illegal and invalid is maintained. The order of reinstatement and continuation in services of the workman is also maintained. However, the matter is remanded back to the Labour Court to decide the question of reinstatement of the workman and the payment of full backwages by Bhandar or Dairy or how this liability has to be shared between them. It shall be open to all the parties to produce further evidence on this question, both documentary or oral. The petitioners in these petitions are directed to pay Rs.2,000/- each by way of costs of this petition to the respondent. Rule is made absolute in aforesaid terms. It is also ordered that the amount which has been deposited by Bhandar and

lying in F.D.R. be remitted to the Labour Court, Rajkot. The Labour Court shall make appropriate order for disbursing this amount while making final Award in this case. As Special Civil Application No.2393 of 1982 has been disposed of, no order to renew the F.D.R. and as the same is ordered to be remitted to the Labour Court, Rajkot for passing appropriate orders. Rule stands disposed of in the aforesaid terms in both these Special Civil Applications.

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(sunil)